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**BEFORE THE
FEDERAL RAILROAD ADMINISTRATION
UNITED STATES DEPARTMENT OF TRANSPORTATION**

In the Matter of:

FRA DOCKET NO. FRA-2001-8728

**U.S. LOCATIONAL REQUIREMENT FOR DISPATCHING
OF U.S. RAIL OPERATIONS**

TESTIMONY OF F.L. McCANN

**[PRESIDENT OF THE AMERICAN TRAIN DISPATCHERS DEPARTMENT
OF THE INTERNATIONAL BROTHERHOOD OF LOCOMOTIVE ENGINEERS]**

Good Morning. I am Leo McCann, President of the American Train Dispatchers Department of the International Brotherhood of Locomotive Engineers. ATDD is the collective bargaining representative for the train dispatchers employed by many of the nation's rail carriers, including Burlington Northern Santa Fe Railroad, Norfolk Southern Railway, CSX Transportation, Inc., Consolidated Rail Corporation, Kansas City Southern Railway, Grand Trunk Western Railroad, CP Rail - Soo Line, and AMTRAK. It is a pleasure and a privilege for me to be here today to summarize ATDD's position on the Interim Rule and to answer any questions you may have regarding that position.

Yesterday, ATDD filed written Comments on the Rule. We support

implementation of the Rule and urge that, with a few minor revisions, it be made permanent.

ATDD has been the major proponent of requiring that the dispatching of U.S. rail operations be maintained in train dispatching offices in this country. We have urged the agency for several years to promulgate a rule like the one it now has put in place on an interim basis. We have urged that the agency seriously examine the ramifications of an extraterritorial transfer of train dispatching and the agency has now done so. Your conclusions and rationale are not surprising to us; in fact, they are just what we would have expected any serious inquiry to come up with.

By virtue of numerous studies it has undertaken over the last 30 years, the FRA has learned how complex, specialized, and difficult a train dispatcher's job is. Our written Comments identify the major reports that have been issued on train dispatching and summarize the findings they set forth. There can be no question that train dispatchers play a unique and crucial role in ensuring the safety of domestic rail operations.

Trains do not move without authority conveyed to locomotive engineers by train dispatchers. Track maintenance and repair gangs cannot occupy tracks without clearance communicated by train dispatchers. The safe movement of rail traffic in and out of terminals, across main lines, over bridges and through tunnels, has been

placed in the hands of the cadre of experienced train dispatchers employed by the nation's private rail carriers. When emergencies arise, the locomotive engineers, the police, fire, and other emergency responders, and the general public all contact the train dispatcher for direction.

United States railroads operate over 170,000 miles of rail track. The heavy responsibility for ensuring the smooth and safe flow of trains over those tracks rests on the shoulders of a mere 3,000 train dispatchers employed by the nation's rail carriers. Most of the trackage is dispatched 24 hours a day every day of the year. The potential for calamity that exists whenever the train dispatchers' responsibilities are compromised is obvious.

Today, technology has advanced to the point where train dispatchers can be located far away from the territories they are controlling. This has placed even greater strain on the dispatchers and the FRA. While there may be fewer offices where dispatchers work, the extent of territory and the amount of traffic under each dispatcher's control has increased.

Train dispatching is highly regulated by federal law. Train dispatchers are limited in the number of hours they may work. They are subject to random, reasonable suspicion, return-to-duty, follow-up and post-incident testing for drug or alcohol abuse. They must submit to periodic operating rules and efficiency testing

and they are personally subject to sanctions for violation of the FRA's safety standards. But these laws only extend to railroad operations within U.S. borders.

None of these laws is enforceable against employees of foreign corporations working in foreign countries. FRA inspectors can walk into any U.S. train dispatching office in this country at any time to investigate whether these laws are being complied with. The agency has no such rights in Canada, Mexico, or elsewhere in the world.

There is no treaty in place that grants FRA that authority. There is no international agreement or compact that would allow that. So what could FRA do if a foreign carrier required a train dispatcher in another country to work in violation of U.S. laws? Nothing. What would happen if an accident resulted from the failure of dispatchers in another country to heed FRA regulations? Nothing. FRA has correctly recognized that without the dispatching office and the dispatcher being physically located in this country, the agency's ability to accomplish its safety mission would be severely compromised.

We do not mean to suggest that any foreign country, or any carrier for that matter, wants to promote hazardous working conditions or unsafe dispatching practices. But we believe that the FRA has acted properly by comparing the level of safety regulation and protection required elsewhere with what is required in the

United States. The standards in effect in the United States are tried and true. The agency cannot adopt a wait-and-see attitude when it comes to standards to be applied to rail traffic control from train dispatching operations abroad. Unless FRA's domestic standards can be enforced abroad, the agency is correct in not permitting extraterritorial dispatching operations to control the movement of rail traffic in the U.S.

Our written Comments focus on the importance of a train dispatcher's communication responsibilities and the detrimental effect that language differences can cause; the importance of the SACP process and how that process could not encompass foreign dispatching; security threats inherent in foreign operations; and how incompatible units of measure and different labor relations laws could affect smooth domestic rail traffic control.

We would anticipate that carriers who oppose the Interim Rule would say that the agency's concerns are overstated because, even if not bound to do so, the carriers would follow FRA's regulations and guidelines anyway. That might be true, but there is no way that such an assurance could be enforced. Any time a carrier felt that compliance with an agency standard became too cumbersome, it could do what it wanted. Certainly there are regulations that carriers would not comply with if didn't have to. We have seen on too many occasions in the past that

voluntary assurances are hollow when it comes to rail safety.

While ATDD agrees wholeheartedly with the agency's determination that a ban on extraterritorial train dispatching is justified, we must point out three deficiencies we see in the Interim Rule.

First, we believe that conditions must be placed upon the grandfathering provision in the Rule. Before permitting those small portions of U.S. tracks to continue to be dispatched from abroad, the FRA should require that those foreign dispatchers at least have a proven familiarity with the territory in this country that they are controlling. We point out in our Comments that while the train dispatcher is the eyes and ears of the train crew as to track conditions beyond their immediate line of sight, the computerized display at the dispatcher's work station does not relate information about the physical aspects of a territory. A dispatcher who has personally seen the territory and who can visualize the physical terrain ahead of a train is far better prepared to respond to protect the safety of the crew. We therefore have suggested that the Interim Rule be amended to provide that those foreign carriers that have dispatched track segments in the United States since December 1999 may continue to do so only if *the dispatcher assigned has been familiarized with the track segment located in the United States by personally observing [that] territory ... no less than semi-annually.*

Second, we believe that the grandfathering provision should only apply to current operators and that the exception should terminate when ownership of the excepted segment changes or the operations on the trackage change. At that time, the only exception for extraterritorial dispatching would be in true emergencies

Third, ATDD believes that no waivers should be allowed from the requirements of the Interim Rule -- Section 241.7 should be eliminated in its entirety. Train dispatching is so central to the safety and security of U.S. rail operations that the amount of time it would take to rescind a waiver once it has been granted may be much too late to be effective.

Moreover, the waiver section is plagued by loopholes. For example, what would happen when a dispatching center that satisfies the conditions for receiving a waiver undergoes a change that would have disqualified it for a waiver in the first place? That center would be located in a foreign country where FRA has no right to go. Further, the Rule establishes no criteria of changes in track configurations, additional mileage, signal system modification/elimination, or addition of shippers like defense or hazardous material manufacturers whose business is not permitted under a waiver. We simply believe that the waiver provision is ill-conceived and so fraught with complications that interfere with the objective of the Rule itself that it should be eliminated.

Even if the FRA adheres to its belief that waivers may be appropriate, we urge you not to grant any waiver until **every** concern raised and **every** potential problem identified in the other sections of the rule is solved. And you should, at a minimum, require carriers who receive waivers to report all changes that would have affected an initial waiver decision as the changes occur, so you can act quickly to respond to the changed circumstances and rescind the waiver.

Finally, ATDD is concerned that the agency has not sufficiently restricted the exception for emergencies. We believe that a carrier's ability to move dispatching operations to another country should be limited to situations where the carrier can prove that such operations could not be transferred to other locations inside this country (such as to another domestic carrier or to temporary stations on its own property). The FRA should require that carriers have plans in place to deal with such emergencies so that domestic alternatives are readily available to them. In addition, the rule should be revised to recognize that a foreign dispatching center controlling American tracks could face a similar emergency, necessitating the relocation of train dispatching operations. If the FRA allows any foreign dispatching of U.S. rail traffic, and again we do not think that it should, the agency should insist that control of U.S. trackage immediately be returned to the U.S. in the event of such a foreign emergency.

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Let me conclude by reminding the agency that there exists no need for any carrier to dispatch rail traffic on trackage in the United States from a point outside this country. Foreign carriers can establish dispatching offices in this country just as easily as domestic carriers have done.

The agency's explanations and rationale for the Interim Rule demonstrate that it is well-aware of the problems that extraterritorial train dispatching operations raise. ATDD concurs in those findings. We believe that the modifications we have suggested would enable FRA to accomplish its goals more easily because those minor changes only strengthen the rule. We look forward to the day that the Interim Rule becomes permanent. Thank you.